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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91191252
Party	Defendant Don Reed
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Date	09/10/2009
Attachments	Applicant Don Reed's Answer.pdf (8 pages)(55227 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SabreMark Limited Partnership,

Opposer,

v.

Don Reed,

Applicant.

Opposition No. 91191252
Application Serial No. 77/398,905
Mark: SaberFlash

APPLICANT DON REED'S ANSWER

Applicant Don Reed ("Applicant") hereby answers the Notice of Opposition filed by SabreMark Limited Partnership ("Opposer") as follows:

In response to the introductory unnumbered paragraph, Applicant denies Opposer's allegation that it will be damaged by the registration of Application Serial No. 77/398,905 for the SaberFlash mark.

1. In response to paragraph 1, Applicant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1 and, therefore, denies such allegations.

2. In response to paragraph 2, Applicant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2 and, therefore, denies such allegations.

3. In response to paragraph 3, Applicant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3 and, therefore, denies such allegations.

4. In response to paragraph 4, Applicant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4 and, therefore, denies such allegations.

5. In response to paragraph 5, Applicant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 and, therefore, denies such allegations.

6. In response to paragraph 6, Applicant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 6 and, therefore, denies such allegations.

7. In response to paragraph 7, Applicant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 7 and, therefore, denies such allegations.

8. In response to paragraph 8, Applicant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 8 and, therefore, denies such allegations.

9. In response to paragraph 9, Applicant responds that the content of paragraph 9 does not require a response.

10. In response to paragraph 10, Applicant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 10 and, therefore, denies such allegations.

11. In response to paragraph 11, Applicant denies each and every allegation in paragraph 11.

12. In response to paragraph 12, Applicant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 12 and, therefore, denies such allegations.

13. In response to paragraph 13, Applicant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13 and, therefore, denies such allegations.

14. In response to paragraph 14, Applicant admits that he filed an application to register his SaberFlash mark on February 16, 2008 in connection with “Computer services, namely, creating and maintaining web sites for others; Computer services, namely, data recovery services; Computer services, namely, designing and implementing network web pages for others; Computer services, namely, managing web sites for others; Computer services, namely, designing and implementing web sites for others; Information technology consultation; Computer software consultancy; Computer software consultation; Computer software installation and maintenance; Design of home pages, computer software and web sites; Installation and maintenance of computer software; Installation of computer software; Installation, maintenance and repair of computer software; Installation, repair and maintenance of computer software; Maintenance and updating of computer software; Maintenance and upgrading of computer software; Maintenance of computer software; Periodic upgrading of computer software for others; Technical support services, namely, troubleshooting of computer software problems; Updating of computer software; Updating and maintenance of computer software; Updating of computer software for others; Computer disaster recovery planning; Research and development of computer software; Computer hardware and software consulting services; Consulting services in the field of design, selection, implementation and use of computer hardware and software systems for others; Customization of computer hardware and software; Technical support services, namely, troubleshooting of computer hardware and software problems; Conversion of data or documents from physical to electronic media; Recovery of computer data.” Applicant further admits that the application was later assigned U.S. Application Serial No. 77/398,905 and that the application claims a date of first use anywhere of April 10, 1992 and a date of first use in interstate commerce of March 20, 1997. Except as expressly admitted, Applicant denies each and every allegation in paragraph 14.

15. In response to paragraph 15, Applicant responds that he lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 15 and, therefore, denies such allegations.

16. In response to paragraph 16, Applicant denies each and every allegation in paragraph 16.

17. In response to paragraph 17, Applicant denies each and every allegation in paragraph 17.

18. In response to paragraph 18, Applicant denies each and every allegation in paragraph 18.

19. In response to paragraph 19, Applicant denies each and every allegation in paragraph 19.

In response to Opposer's WHEREFORE and prayer for relief paragraph, Applicant denies that there is a basis to sustain the opposition and states that the application should be allowed to register.

AFFIRMATIVE DEFENSES

By way of further answer, Applicant alleges and asserts the following defenses in response to the allegations contained in the Notice of Opposition. In this regard, Applicant undertakes the burden of proof only as to those defenses that are deemed affirmative defenses by law, regardless of how such defenses are denominated in the instant Answer. Applicant reserves the right to assert other affirmative defenses as this opposition proceeds based on further discovery, legal research, or analysis that may supply additional facts or lend new meaning or clarification to Opposer's claims that are not apparent on the face of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE **FAILURE TO STATE A CLAIM**

20. Opposer's claims are barred, in whole or in part, because the Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
NO INJURY OR DAMAGE

21. Opposer's claims are barred, in whole or in part, because Opposer has not and will not suffer any injury or damage from the registration of Application Serial No. 77/398,905 for SaberFlash.

THIRD AFFIRMATIVE DEFENSE
LACK OF STANDING

22. Opposer's claims are barred, in whole or in part, because Opposer does not have standing in that Opposer does not have rights, superior or otherwise, sufficient to support the Notice of Opposition.

FOURTH AFFIRMATIVE DEFENSE
LACK OF LIKELIHOOD OF CONFUSION

23. Applicant's SaberFlash mark differs in terms of sight, sound, and meaning from Opposer's claimed SABRE mark(s) and has a distinct commercial impression from Opposer's claimed SABRE mark(s).

24. Applicant's use and registration of the SaberFlash mark does not create a likelihood of confusion among consumers that Applicant's goods or services are offered by, are sponsored by, or are otherwise endorsed by Opposer. Nor does Applicant's use or registration of the SaberFlash mark create a likelihood that consumers falsely will believe that Applicant and Opposer are affiliated in any way.

FIFTH AFFIRMATIVE DEFENSE
LACK OF ACTUAL CONFUSION

25. Applicant has used the SaberFlash mark in the United States since 1992, but has not experienced any confusion with Opposer or Opposer's goods or services. On information and belief, Opposer also has not experienced any actual confusion.

SIXTH AFFIRMATIVE DEFENSE
NARROW RIGHTS

26. On information and belief, the common law adoption and use of the term SABER is widespread in connection with numerous goods and services, including software and computer services. Such common law adoption and use requires that Opposer's claimed mark(s) be narrowly construed, such that Opposer's claimed mark(s) cannot—as a matter of law—form the basis of a likelihood of confusion claim against Applicant's SaberFlash mark.

27. The adoption and use of the term SABER is part of federally registered third party marks and federally pending applications for third party marks for numerous goods and services, including software and computer services, which are not owned by Opposer, including by way of example the following marks: SABERTOOTH (U.S. Registration No. 3,182,979) for computer software; SABER (U.S. Registration No. 3,050,357) for type face fonts; SABER (U.S. Registration No. 2,808,606) for test probe electrical contacts for integrated circuits and semiconductor devices; SED DE SABER (U.S. Registration No. 3,261,836) for educational software; SABERNET (U.S. Registration No. 2,752,6850 for computer software; SABER DATA (U.S. Registration No. 3,490,905) for computer peripherals; SABER (U.S. Registration No. 2,732,631) for computer to plate devices; SABER SITUATIONAL AWARENESS BEACON WITH REPLY (U.S. Registration No. 2,317,652) for computers and computer software; SABER (U.S. Registration No. 1,836,581) for computer programs; SABER (U.S. Registration No. 1,584,354 for electronic circuit boards; SABERDESIGN (U.S. Registration No. 3,260,520) for computer graphic services; SABER SEVEN (U.S. Registration No. 3,601,805) for computer services; SABERLOGIC (U.S. Registration No. 2,755,859) for computer consultation services; and so on. The existence of such registered and pending third party marks requires that Opposer's claimed mark(s) be narrowly construed, such that Opposer's claimed mark cannot—as a matter of law—form the basis of a likelihood of confusion claim against Applicant's SaberFlash mark.

SEVENTH AFFIRMATIVE DEFENSE
ESTOPPEL

28. Opposer's claims are barred, in whole or in part, by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE
LACHES

29. Opposer's claims are barred, in whole or in part, by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE
ACQUIESCENCE

30. Opposer's claims are barred, in whole or in part, by the doctrine of acquiescence.

TENTH AFFIRMATIVE DEFENSE
WAIVER

31. Opposer's claims are barred, in whole or in part, by the doctrine of waiver.

ELEVENTH AFFIRMATIVE DEFENSE
INSUFFICIENT PRIOR EXCLUSIVE RIGHTS

32. Opposer's claims are barred, in whole or in part, because Opposer cannot establish prior exclusive rights in the United States sufficient to bar Applicant's registration of SaberFlash.

WHEREFORE, Applicant requests judgment as follows:

1. That the Notice of Opposition be dismissed with prejudice;
2. That Application Serial Nos. 77/398,905 be allowed to register; and
3. That Applicant be granted further reasonable and appropriate relief.

Dated: September 10, 2009

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the following document:

APPLICANT DON REED'S ANSWER


has been served on

J. Kevin Gray
Linda M. Novak
Fish & Richardson P.C.
1717 Main Street, Suite 5000
Dallas, Texas 75201

by mailing such document on September 10, 2009 by First Class Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Dated: September 10, 2009



Bruno W. Tarabichi